

HERB BALLOU

IBLA 80-585

Decided August 12, 1980

Appeal from a decision of the Montana State Office, Bureau of Land Management, rejecting for purposes of recordation the notices of location for the Bonee, Carrie Jo, Margo, and Olin lode mining claims. 3833 (952) MCA-MT-08.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Generally – Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment – Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of Oct. 21, 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1-2, the owner of a lode mining claim, located after Oct. 21, 1976, must file a notice of recordation of the claim with the proper Bureau of Land Management Office within 90 days of location of the claim. Failure to so file is deemed conclusively to constitute an abandonment of the claim by the owner and renders the mining claim void.

APPEARANCES: Herb Ballou, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Herb Ballou appeals from the decision of the Montana State Office, Bureau of Land Management (BLM), returning mining claim recordation notices for the Bonee, Carrie Jo, Margo, and Olin lode claims because he had not filed the notices with BLM within 90 days after the date of location. BLM indicated the lode mining claims are abandoned and void under the Federal Land Policy and Management

Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and regulations 43 CFR 3833.1-2(b) and 43 CFR 3833.4(a). The notices indicate that the claims were located on December 31, 1979. BLM received the copies of the notices on April 4, 1980. Appellant does not dispute that the notices of location were tendered to BLM after the 90-day period for recordation had passed.

[1] Section 314 of FLPMA requires the owner of an unpatented lode or placer mining claim located after October 21, 1976, to file a copy of the official record of the notice of location in the BLM office designated by the Secretary of the Interior within 90 days after the date of the location. It also provides that failure to timely file such record shall be deemed conclusively to constitute an abandonment of the mining claim by the owner and renders the claim void.

The pertinent regulations provide in part:

[§] 3833.1-2 Manner of recordation – Federal lands.

* * * * *

(b) The owner of an unpatented mining claim, mill site, or tunnel site located after October 21, 1976, on Federal land shall file (file shall mean being received and date stamped by the proper BLM office) within 90 days after the date of location of that claim in the proper BLM office a copy of the official record of the notice or certificate of location of the claim or site filed under state law or, if the state law does not require the recordation of a notice or certificate of location of the claim or site, a certificate of location containing the information in paragraph (c) of this section.

§ 3833.4 Failure to file.

(a) The failure to file an instrument required by §§ 3833.1-2(a), (b), and 3833.2-1 of this title within the time periods prescribed therein, shall be deemed conclusively to constitute an abandonment of the mining claim, mill site or tunnel site and it shall be void.

In his statement of reasons appellant explains that he had hired a surveying engineer to mark the corners of his claims in order to comply with the recording regulations. He then adds that inclement weather in the region prevented his surveyor from timely completing the process.

Under FLPMA and the regulations, the requirements for filing are clear. The Board has repeatedly held that when a notice of a mining claim is not filed with BLM within 90 days from the date of location, it has no force and effect. George Toole, 47 IBLA 89 (1980); M. J. Reeves, 41 IBLA 92 (1979); William E. Rhodes, 38 IBLA 127 (1978); R. Wade Holder, 35 IBLA 169 (1978). The claim must be deemed conclusively to have been abandoned under the terms of the statute and is rendered void. Phillip M. Gardiner, 41 IBLA 391 (1979).

The responsibility for complying with the recordation requirement rested with appellant. Whether or not appellant's employee completed his surveying task in a timely fashion cannot excuse appellant from compliance with the statute and regulations. We have no authority to waive the statutory requirements.

We note in closing that appellant may relocate these claims, if for locatable minerals, and file notice of this as provided in 43 CFR 3833.1, subject to any intervening rights of third parties, and assuming the land remains open for mining location.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Joseph W. Goss
Administrative Judge

